

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EUGENE BRIAN GARVIE,  
Petitioner,

JASON BENNETT

Respondent.

NO. 2:24-cv-00232-RAJ

**ORDER**

This matter is before the Court on several motions filed by pro se prisoner petitioner Eugene Garvie, including motions seeking relief from judgment, Dkt. ## 20, 21, 23, 25, 26, 27, 28, two motions seeking an order requiring Respondent and the Snohomish County Clerk to produce the Clerk's file and other documents, Dkt. ## 30, 31, and a motion seeking an order that Respondent must answer the Petition. Dkt. # 32. Further, Petitioner has filed a motion requesting that a magistrate judge "assist this Court in the conduct of discovery proceedings," Dkt. # 33, and a motion to appoint counsel. Dkt. # 34.

On March 4, 2024, Petitioner filed his petition for writ of habeas corpus. Dkt. # 6. On April 17, 2024, this Court entered an order adopting the Report and Recommendation of the Honorable Brian A. Tsuchida, dismissing this matter with prejudice and denying a Certificate of Appealability. Dkt. # 14, 15. This Court found that the Petition, which challenged Petitioner's 2007 Snohomish County criminal conviction, was time barred by the statute of limitations and was a second or successive request for habeas relief from his state court judgment and sentence. Dkt. # 8 at 7. This Court noted that Petitioner previously brought an unsuccessful challenge to his judgment and conviction in *Garvie v. State of Washington*, 2:18-cv-01371-JLR<sup>1</sup>. *Id.* After this Court dismissed the Petition with prejudice, Petitioner filed a Notice of Appeal to the Ninth Circuit Court of Appeals. Dkt. #16. The Ninth Circuit assigned Petitioner's appeal a case number, and on May 9, 2024 noted that a Certificate of Appealability had been denied by the district court in April. *See Garvie v. Bennett*, No. 24-2965, ECF No. 2. The Ninth Circuit stated that no briefing schedule would be set until the appeals court or the district court determines whether a Certificate of Appealability should issue. *Id.*

Plaintiff then filed seven substantially similar motions seeking relief from judgment. Dkt. ## 20, 21, 23, 25, 26, 27, 28. Petitioner brings these motions under Federal Rule of Civil Procedure 60(b)(4), arguing that the judgment is void. *Id.* Petitioner argues, alternatively, that this Court violated the Magistrate Act and Habeas Rule 8(b) by asserting a procedural defense not made by respondent, and that this Court failed to conduct de novo review of the Request for Certification. *Id.* Petitioner also appears to seek reconsideration of the denial of a Certificate of Appealability to avoid a dilatory remand. *Id.* Petitioner's motions do not address the substance or reasoning of the Report & Recommendation or the standard for reconsideration. Further, Petitioner fails to show

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<sup>1</sup> In that matter, Petitioner filed an appeal, and the Ninth Circuit denied Petitioner's request for a Certificate of Appealability and dismissed the matter. 2:18-cv-01371-JLR, ECF. No. 18.

1 that the judgment is void because this Court lacked subject matter jurisdiction, lacked  
2 jurisdiction over the parties, or acted in a matter inconsistent with due process that  
3 deprived a party of notice or the opportunity to be heard. *United Student Aid Funds, Inc.*  
4 *v. Espinosa*, 559 U.S. 260, 270 (2010). And in any event, it is clear that Petitioner's  
5 habeas petition is time barred and a second or successive petition.

6 The Court's judgment is not void, and Petitioner is not entitled to a Certificate of  
7 Appealability, because he has not demonstrated that "jurists of reason could disagree with  
8 the district court's resolution of his constitutional claims or that jurists could conclude the  
9 issues presented are adequate to deserve encouragement to proceed further." *Miller-El v.*  
10 *Cockrell*, 537 U.S. 322, 327 (2003).

11 Therefore, Plaintiff's Motions for Relief from Judgment, Dkt. ## 20, 21, 23, 25,  
12 26, 27, 28, are **DENIED**. Petitioner's remaining Motions, Dkt. # 30, 31, 32, 33, 34, are  
13 **DENIED** as moot.

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15 DATED this 22nd day of August, 2024.

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18 The Honorable Richard A. Jones  
19 United States District Judge  
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